

HOUSE BILL 1502

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 36
and Title 37, relative to foster parents' visitation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 2, Part 4, is amended by
adding the following as a new section:

(a) Any of the following circumstances, when presented in a petition for foster
care visitation to the circuit, chancery, general sessions courts with domestic relations
jurisdiction, or juvenile court in matters involving children born out of wedlock of the
county in which the petitioned child currently resides, necessitates a hearing if such
foster parent visitation is opposed by the custodial parent or parents:

(1) The child resided in the home of the foster parent for a period of
twelve (12) months or more and was subsequently removed from the home due
to no fault by the foster parent. This relationship between foster parent and
foster child establishes a rebuttable presumption that denial of visitation may
result in irreparable harm to the child; or

(2) The child and the foster parent maintained a significant existing
relationship for a period of twelve (12) months or more immediately preceding
severance of the relationship. The relationship was severed by the child being
removed from the foster home due to no fault by the foster parent, and
severance of this relationship is likely to occasion substantial emotional harm to
the child.

(b)

(1) In considering a petition for foster parent visitation, the court shall first determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation of the relationship between an unmarried minor child and the foster parent if the court determines, upon proper proof, that:

(A) The child had such a significant existing relationship with the foster parent and the loss of the relationship is likely to occasion severe emotional harm to the child; or

(B) The child had a significant existing relationship with the foster parent and loss of the relationship presents the danger of other direct and substantial harm to the child.

(2) For purposes of this section, a foster parent shall be deemed to have a significant existing relationship with a child if:

(A) The child resided with the foster parent for at least six (6) consecutive months; or

(B) The foster parent was a full-time caretaker of the child for a period of not less than six (6) consecutive months.

(3) A foster parent is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a child or that the loss of the relationship is likely to occasion severe emotional harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the foster parent and child or that the loss of the relationship is likely to occasion severe emotional harm to the child.

(c) Upon an initial finding of danger of substantial harm to the child, the court shall then determine whether foster parent visitation would be in the best interests of the

child based upon the factors in subsection (e). Upon such determination, reasonable visitation may be ordered.

(d) Notwithstanding any law to the contrary, as used in this section, with regard to the petitioned child, "foster parent" means any person with whom a child in the care, custody, or guardianship of the department was placed for temporary or long-term care.

(e) In determining the best interests of the child for purposes of foster parent visitation, the court shall consider all pertinent matters, including the following:

(1) The length and quality of the prior relationship between the child and the foster parent and the role performed by the foster parent;

(2) The existing emotional ties of the child to the foster parent;

(3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;

(4) The effect of hostility between the foster parent and the parent of the child manifested before the child, and the willingness of the foster parent, except in cases of abuse, to encourage a close relationship between the child and the parent or parents, or guardian or guardians of the child;

(5) The good faith of the foster parent in filing the petition;

(6) If the parents are divorced or separated, the time-sharing arrangement that exists between the parents with respect to the child;

(7) Any unreasonable deprivation of the foster parent's opportunity to assist the child in transitioning to a new custody arrangement;

(8) Whether the foster parent is seeking to maintain a significant existing relationship with the child;

(9) Whether awarding foster parent visitation would interfere with the parent-child relationship; and

(10) Any court finding that the child's parent or guardian is unfit.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.